



STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

DONALD SPONZA,	)	
	)	
Charging Party,	)	
<u>APPELLANT</u> ,	)	Case No. LA-CO-278
	)	
v.	)	PERB Decision No. 402
	)	
SERVICE EMPLOYEES INTERNATIONAL	)	August 31 , 1984
UNION, LOCAL 99, AFL-CIO,	)	
	)	
Respondent.	)	

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Appearances; Donald Sponza, in propria persona.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (Board) on appeal filed by Donald Sponza of a regional attorney's refusal to issue a complaint and dismissal of his unfair practice charge on the ground that it was time-barred. In the underlying charge, Sponza alleged that the Service Employees International Union, Local 99, AFL-CIO (Union) had engaged in conduct violative of section 3543.6 of the Educational Employment Relations Act (EERA).<sup>1</sup>

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq.

Section 3543.6 provides:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public

The Board has reviewed the appeal and the entire record in this case. While we concur with the disposition of this matter, we do not agree with the regional attorney's finding that Appellant's request for representation in the administrative review of his layoff was a revival of a previous request for Union assistance. We are persuaded that there were two separate and distinct requests: one, in June 1982, for assistance in the processing of a grievance against the threat of imminent layoff and the other for representation in the administrative proceedings after the layoff became effective in February 1983. In spite of this disagreement, we affirm the regional attorney's finding that the Union did not breach its duty of fair representation when it denied Appellant's request for representation in the administrative review of his layoff.

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school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

In Rocklin Teachers Professional Association (Romero)  
(3/26/80) PERB Decision No.124, the Board, following precedent  
set by the National Labor Relations Board and affirmed by the  
Supreme Court in Vaca v. Sipes (1967) 386 U.S. 171, noted:

. . . a breach of the duty of fair  
representation occurs when a union's conduct  
toward a member of the bargaining unit is  
arbitrary, discriminatory, or in bad faith.  
Rocklin at p. 7.

According to the allegations contained in the instant  
charge, Sponza wrote the Union on May 10, 1983, asking that the  
Union "represent me and ad [sic] there [sic] voice to my  
request." Attached to this letter was a document to Sponza  
from the Los Angeles City School District in which it advised  
Sponza that he had seven days to request an appeal of his  
layoff status in an administrative review. Because this letter  
to Sponza was dated February 10, 1983, the Union presumably  
believed, and so advised Sponza, that the time period within  
which he could have invoked his rights, by requesting an  
administrative review, had elapsed. In the absence of any  
allegations in this case which indicate that Sponza advised the  
Union that a timely request had been made of the District, we  
do not find that the Union acted arbitrarily, discriminatorily  
or in bad faith.

#### ORDER

Based upon the foregoing facts and conclusions of law, the

charge filed by Donald Sponza against the Service Employees International Union, Local 99, AFL-CIO, is hereby DISMISSED.

Chairperson Hesse and Member Morgenstern joined in this Decision.